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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,020	07/20/2001	Nash Nizamuddin	P70501	9104

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EXAMINER

MATHEW, FENN C

ART UNIT PAPER NUMBER

3764

DATE MAILED: 01/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/909,020

Applicant(s)

NIZAMUDDIN, NASH

Examiner

Fenn C Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 11-14, 17 and 18 is/are rejected.
- 7) ☒ Claim(s) 7-10, 15, 16, 19 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 11-14, and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bull (U.S. 5,503,609) in view of Yacullo (U.S. 5,222,928) and Flament (U.S. 4,911,430). Bull teaches an exercising apparatus including a pair of shuttles including a frame for supporting a foot of a user standing in a generally forward facing position thereon, and a guiding mechanism, a guide rail assembly extending in a direction away from each other in a substantially mirror arrangement from the midpoint of the rail assembly to distal ends. The guiding mechanisms guides the associated shuttle in movement along an associated one of the rail assemblies between proximal end (midpoint) and a distal end, whereby alternating reciprocal movement of the shuttles along the rail assembly moves the feet of a user thereon substantially in skating or rollerblading movement. Bull does not teach the rail assembly moving downwardly from the proximal end to the distal end. Yacullo teaches an analogous device including a guide rail assembly comprised of two mirror image guide rails (15, 16) attached a proximal end, and extending downwardly towards respective distal ends, and a pair of shuttles (19). Yacullo teaches that it is desirable to have "A-shaped" guide rails in order to provide greater exercise benefits during use. Therefore, it would have been obvious

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to one having ordinary skill in the art at the time of invention to have the guide rails of Bull configured as the guide rails of Yacullo in an "A-shaped" configuration in order to provide greater exercise benefits. Furthermore, Bull fails to teach the distal ends of the guide rails extending rearwardly. Flament teaches in figure 2, and the abstract, an analogous device including a pair of shuttle on a curved guide assembly, wherein the ends of the guide assembly are rearward from the center of the guide assembly.

Flament teaches that it is desirable to have such a configuration in order to better imitate actual motions during skiing or skating. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to have the guide rail assembly of Bull further have distal ends that are rearward of the proximal midpoint in order to better mimic motions made during actual skiing or skating.

3. Referring to claim 2, Bull as modified above, teaches the guide rail assembly comprising parallel rails (54), and each guiding mechanism further including wheels rotatably engaging at least one of the rails and the associated rail assembly for rolling movement therealong.

4. Referring to claim 3, 12, and 18 Bull teaches a return device for biasing the shuttles to an initial starting position spaced toward the proximal end of the associated rail assembly (col. 12, lines 3-11).

5. Referring to claim 4 and 13, Bull discloses the return device being a resilient shock cord (see above cited sections).

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6. Referring to claim 5, 14, and 18 Bull discloses a tensioning mechanism selectively operable to permit the user to vary resistance to the movement of the shuttles in at least one direction along the associated rail assemblies.

7. Referring to claim 6, Bull discloses a flywheel, drive cables, a tensioning strap, and adjustment mechanism for improved adjustable resistance during skating motion exercises (col. 7, lines 35 – col. 8 line 30).

#### ***Allowable Subject Matter***

8. Claims 7-10, 15-16, and 19-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Please refer to paragraph 15 of the previous office action.

#### ***Response to Arguments***

9. Applicant's arguments, see Paper No. 4, filed 10/21/2003, with respect to the rejection(s) of claim(s) 1-6, 11-14, and 17-18 under Schutzer have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Bull, Flament and Yaccullo.

#### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



NICHOLAS D. LUCCHESI  
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*fcm*  
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January 9, 2004